

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

RAY RHYMER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1:05CV175 HEA
	)	
VERSA PRODUCTS, INC., et al.,	)	
	)	
Defendants.	)	

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendant Wal-Mart Stores, Inc.’s Motion for Summary Judgment, [Doc. No. 49], and Plaintiff’s Motion for Leave to File Second Amended Complaint Out of Time, [Doc. No. 53]. For the reasons set forth below, the motions are granted.

**Motion for Summary Judgment**

Defendant Wal-Mart moves for summary judgment based, initially on Plaintiff’s inability to prove that it in fact was the seller of the allegedly defective product. Plaintiff concedes this ground for summary judgment and agrees that judgment should be entered on behalf of Wal-Mart based on failure to prove that it was the seller. As such, the Court will grant judgment in favor of Wal-Mart.

**Motion for Leave to File Amended Complaint**

Plaintiff seeks to file an Amended Complaint to add Sam's Club, which Plaintiff believes is the seller of the allegedly defective product. The Motion will be granted. Plaintiff's Amended Complaint no longer names Wal-Mart as a defendant. No parties will be prejudiced by the filing of the Amended Complaint out of time. The Court recognizes that when Sam's Club is properly before the Court, the Case Management Order will need amendment. The Court, therefore will entertain a motion to that effect upon an entry of appearance or other pleading by Sam's Club.

Accordingly,

**IT IS HEREBY ORDERED** that Wal-Mart's Motion for Summary Judgment, [Doc. No. 49], is GRANTED, as provided herein.

**IT IS FURTHER ORDERED** that judgment in favor of Wal-Mart will be entered upon completion of the remaining issues herein.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Leave to File Second Amended Complaint Out of Time, [Doc. No. 53] is granted. The Clerk of Court shall file Plaintiff's proposed Amended Complaint Instantly.

Dated this 11th day of October, 2007.



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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE